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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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Lynn Irwin

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05/26/2006

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EXAMINER

VALENTI, ANDREA M

ART UNIT

PAPER NUMBER

3643

DATE MAILED: 05/26/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/694,654

Applicant(s)

IRWIN ET AL.

Examiner

Andrea M. Valenti

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 21 March 2006.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-66 is/are pending in the application.
- 4a) Of the above claim(s) 37-66 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-4, 9-22, 24, 26-36 is/are rejected.
- 7) ☒ Claim(s) 5-8, 23 and 25 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- ☒ Notice of References Cited (PTO-892)
- ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____
- ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____
- ☐ Notice of Informal Patent Application (PTO-152)
- ☐ Other: _____

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DETAILED ACTION

Election/Restrictions

Applicant's election without traverse of Species 2 (Figs. 6-10 and 16) claims 1-36; Species B (Figs. 11, 12-A-12B, 13A-13C, 14A-14B and 15A-15C) claims 17 and 36; Species II (Figs. 17-19) claims 37-50 and 52-57 in the reply filed on 21 March 2006 is acknowledged.

Applicant's election without traverse of Group I, claims 1-36 in the reply filed on 21 September 2005 is acknowledged.

Double Patenting

The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. A nonstatutory obviousness-type double patenting rejection is appropriate where the conflicting claims are not identical, but at least one examined application claim is not patentably distinct from the reference claim(s) because the examined application claim is either anticipated by, or would have been obvious over, the reference claim(s). See, e.g., *In re Berg*, 140 F.3d 1428, 46 USPQ2d 1226 (Fed. Cir. 1998); *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) or 1.321(d) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent either is shown to be commonly owned with this application, or claims an invention made as a result of activities undertaken within the scope of a joint research agreement.

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

Claims 1-4, 9-22, 24, 26-36 are rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 1-13 of U.S.

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Patent No. 6,729,266 to Gabriel et al. Although the conflicting claims are not identical, they are not patentably distinct from each other because both the pending application and the patent claim a ventilated cage and rack system for housing at least one cage assembly, said system comprising: a ventilated rack, the rack including at least one air exhaust plenum, and at least one canopy disposed within said rack, the canopy being adapted to position said cage assembly below the canopy while maintaining a gap between the top of said cage assembly so as to permit air to be drawn into the air exhaust plenum from the interior of said cage assembly through the top of said cage assembly and to also permit ambient air to be drawn across the top of said cage assembly into the air exhaust plenum, but the patent is silent on claiming wherein said cage assembly comprises at least one of a first cage having a first width and a plurality of second cages having a second width, said second width being less than said first width. However, it would have been obvious to one of ordinary skill in the art to include different size cages of different dimensions to accommodate different size animals in an efficient manner. The modification is merely a change in size and making the rack adjustable to accommodate a different size, which both modification do not present patentably distinct limitations.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1, 3, 10-22, 24, 26-36 are rejected under 35 U.S.C. 102(b) as being anticipated by U.S. Patent No. 6,158,387 to Gabriel et al.

Regarding Claims 1 and 20-22, Gabriel teaches a ventilated cage and rack system for housing at least one cage assembly, said system comprising: a ventilated rack (Gabriel #12), the rack including at least one air exhaust plenum (Gabriel Fig. 3 #42), and at least one canopy (Gabriel Fig. 3 #30) disposed within said rack, the canopy being adapted to position said cage assembly below the canopy while maintaining a gap between the top of said cage assembly so as to permit air to be drawn into the air exhaust plenum from the interior of said cage assembly through the top of said cage assembly and to also permit ambient air to be drawn across the top of said cage assembly into the air exhaust plenum (Gabriel Fig. 3 arrows), wherein said cage assembly comprises at least one of a first cage having a first width (Gabriel #20a) and a plurality of second cages (Gabriel Fig. 1 #20b) having a second width, said second width being less than said first width (Gabriel Col. 11 line 63-67 and Col. 12 line 1-8).

Regarding Claims 3 and 24, Gabriel teaches the canopy comprises a channeling element (Gabriel channels is created by the lid of the cage and the top and side of the canopy fig. 3) adapted to facilitate said drawing of ambient air across said top of said cage assembly into the air exhaust plenum when said cage assembly comprises a plurality of said second cages.

Regarding Claims 10 and 27, Gabriel teaches said canopy comprises a discrete reinforcement member (Gabriel Fig. 1 #19) disposed on a front edge of said canopy .

Regarding Claims 11 and 28, Gabriel teaches said canopy is attached to said air exhaust plenum and communicates with said air exhaust plenum through ducts (Gabriel Fig. 3 #43) in said air exhaust plenum.

Regarding Claims 12 and 29, Gabriel teaches said rack further comprises at least one air supply plenum (Gabriel Fig. 3 #40) and wherein said canopy positions said cage assembly to receive air from said air supply plenum.

Regarding Claims 13 and 30, Gabriel teaches the canopy further comprises a top plate, a left side wall and a right side wall (Gabriel Fig. 3 #31a, 32a, 34a).

Regarding Claims 14 and 31, Gabriel teaches the top and side plates are of substantially the same length as the length of said cage assembly in the rack (Gabriel Fig. 3).

Regarding Claims 15 and 32, Gabriel teaches wherein each of said side walls is substantially perpendicular to the top plate (Gabriel Fig. 3 #31a, 32a, 34a).

Regarding Claims 16 and 33, Gabriel teaches said top plate and said left and right side walls are formed as a unitary member (Gabriel Fig. 3 #31a, 32a, 34a).

Regarding Claims 17 and 36, Gabriel teaches each said cage of said cage assembly further comprises a bottom portion with side walls and a filter cap, the filter cap having side walls which overhang the side walls of the bottom portion of the cage when the filter cap is mounted on the bottom portion, and wherein each of said left and right side walls of the canopy further comprise a lip extending perpendicularly from the side plate so that the lips extend underneath at least a portion of the overhanging side walls of the filter cap of the second cage (Gabriel Fig. 3#39 and 29 and #24).

Regarding Claims 18, 19, 34 and 35, Gabriel teaches said at least one canopy is substantially comprised of a transparent material; said at least one canopy is substantially comprised of clear plastic (Gabriel Col. 6 line 21-24).

Regarding Claim 26, Gabriel teaches each of said two second cages are secured within said ventilated rack by a corresponding cage lock, said cage locks being disposed on said ventilated rack such that said cage locks are disposed about non-adjacent sides of said cages (Gabriel Col. 12 line 9-18 and Col. 14 line 42-55).

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 2, 4, and 9 are rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent No. 6,158,387 to Gabriel et al.

Regarding Claim 2, Gabriel is silent on said plurality of second cages consists of two second cages. However, it would have been obvious to one of ordinary skill in the art to modify the teachings of Gabriel at the time of the invention since the modification is merely the selection of a the total number of desired cages of a desired size based on the number of animals that require housing or the size of the rack.

Regarding Claim 4, Gabriel as modified teaches the canopy comprises a channeling element (Gabriel channels is created by the lid of the cage and the top and side of the canopy fig. 3) adapted to facilitate said drawing of ambient air across said

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top of said cage assembly into the air exhaust plenum when said cage assembly comprises a plurality of said second cages.

Regarding Claim 9, Gabriel as modified teaches each of said two second cages are secured within said ventilated rack by a corresponding cage lock, said cage locks being disposed on said ventilated rack such that said cage locks are disposed about non-adjacent sides of said cages (Gabriel Col. 12 line 9-18 and Col. 14 line 42-55).

Allowable Subject Matter

Claims 5-8, 23, and 25 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Conclusion

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

U.S. Patent No. 4,343,261 (Fig.1 #20 and 29 and Fig. 2 #29)


U.S. Patent No. 6,588,371 (Fig. 1 bottom row of containers/cages)

U.S. Patent No. 5,823,144; U.S. Patent No. 5,954,013; U.S. Patent No. 5,044,316; U.S. Patent No. 6,336,427; U.S. Patent No. 6,543,387; U.S. Patent No. 7,036,457; U.S. Patent No. 5,349,923; U.S. Patent No. 5,924,384; U.S. Patent No. 6,227,146; U.S. Patent No. 5,048,459; Japanese Patent JP 05168362A.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Andrea M. Valenti whose telephone number is 571-272-6895. The examiner can normally be reached on 7:00am-5:30pm M-Th.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Peter M. Poon can be reached on 571-272-6891. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.


Andrea M. Valenti
Patent Examiner
Art Unit 3643

24 May 2006